# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JOSE J. GOMEZ	)	
Claimant	)	
VS.	)	
	) Docket No. 233,2	293
NATIONAL BEEF PACKING COMPANY	)	
Respondent	)	
AND	)	
	)	
WAUSAU INSURANCE COMPANIES	)	
Insurance Carrier	)	

## ORDER

The respondent and its insurance carrier appealed the February 19, 1999 preliminary hearing order entered by Administrative Law Judge Pamela J. Fuller.

#### ISSUES

This is a claim for a January 26, 1998 accident and injury to the right knee. The Judge awarded preliminary hearing benefits.

Respondent and its insurance carrier contend the Judge erred and argued that claimant's present disability and need for medical treatment is not related to the January 1998 accident. They contend that the symptoms for the 1998 accident have resolved and that claimant's present disability and need for medical treatment is solely related to a preexisting condition.

Conversely, claimant contends his present condition is related to the January 1998 accident and that the Appeals Board does not have jurisdiction to review this preliminary hearing order.

The two issues before the Board on this appeal are:

1. Does the Appeals Board have the jurisdiction to review a preliminary hearing finding that a worker's present disability and need for medical treatment is related to the alleged accident at work?

2. If so, is claimant's present disability and need for medical treatment related to the January 26, 1998, accident?

## FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

- 1. On January 26, 1998, some wooden pallets fell from a stack and struck Mr. Gomez's right knee cap. The accident occurred while Mr. Gomez was working for National Beef.
- 2. Mr. Gomez immediately sought medical treatment for his knee. The company authorized orthopedic surgeon Guillermo Garcia, M.D., to treat Mr. Gomez.
- 3. Approximately five years before this accident, Mr. Gomez injured his right knee and had arthroscopic surgery. But his testimony is uncontroverted that the symptoms from that injury had resolved and that he had neither pain nor discomfort in his knee when he began working for National Beef in October 1997.
- 4. Before beginning to work for National Beef, Mr. Gomez passed the physical examination provided by the company-selected physician, Dr. Garcia. Dr. Garcia's notes from October 1997 indicate that Mr. Gomez was "absolutely asymptomatic".
- 5. After considering Mr. Gomez's testimony that his symptoms have not subsided since the January 1998 accident and the various medical opinions and diagnoses provided, the Judge found that Mr. Gomez's present knee complaints were related to the January 1998 work-related accident. At this stage of the proceeding, the Appeals Board adopts that finding. That finding is consistent with the opinions expressed by orthopedic surgeon Bernard T. Poole, M.D., who found that Mr. Gomez has patella femora arthritis that could have been aggravated or exacerbated by the 1998 accident.

#### Conclusions of Law

- 1. The preliminary hearing order should be affirmed.
- 2. The Appeals Board has the jurisdiction to review a preliminary hearing finding of whether a present disability and need for medical treatment is related to an accident that occurred at work.<sup>1</sup>
- 3. Both the Judge and the Appeals Board conclude that the January 1998 accident, at the very least, has aggravated a preexisting arthritic condition in Mr. Gomez's right knee.

<sup>&</sup>lt;sup>1</sup> See K.S.A. 1998 Supp. 44-534a.

4. An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>2</sup> The test is not whether the accident causes the condition, but whether the accident aggravates, accelerates, or intensifies the condition.<sup>3</sup>

**WHEREFORE**, the Appeals Board affirms the February 19, 1999 preliminary hearing order entered by Administrative Law Judge Pamela J. Fuller.

# IT IS SO ORDERED.

Dated this \_\_\_\_ day of April 1999.

## **BOARD MEMBER**

c: Stanley R. Ausemus, Emporia, KS
D. Shane Bangerter, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director

<sup>&</sup>lt;sup>2</sup> Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>&</sup>lt;sup>3</sup> Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).